

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT KNOXVILLE

Assigned on Briefs June 23, 2009

**STATE OF TENNESSEE v. JESSICA MARIE BROWN**

**Appeal from the Criminal Court for Cumberland County**  
**No. 9915 Leon Burns, Judge**

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**No. E2008-02748-CCA-R3-CD - Filed August 24, 2009**

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The Defendant, Jessica Marie Brown, pled guilty to child neglect, a Class A misdemeanor. See T.C.A. § 39-15-401 (2006). At the sentencing hearing, the trial court ordered that she serve her eleven-month, twenty-nine day sentence in confinement. On appeal, the Defendant contends that the trial court erred in denying probation. In view of the Defendant's failure to include the transcript of the guilty plea hearing in the appellate record, we affirm the judgment of the trial court.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed**

JOSEPH M. TIPTON, P.J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR., and NORMA MCGEE OGLE, JJ., joined.

Kevin R. Bryant, Crossville, Tennessee, for the appellant, Jessica Marie Brown

Robert E. Cooper, Jr., Attorney General and Reporter; Leslie E. Price, Assistant Attorney General; Randall A. York, District Attorney General; and Gary McKenzie, Assistant District Attorney General, for the appellee, State of Tennessee.

**OPINION**

We gather the following information from the transcript of the sentencing hearing and its exhibits, which include the presentence report. The then-twenty-two-year-old Defendant is the mother of three children. The present offense relates to her neglect of one of the three during a period of time in which she used methamphetamine regularly. She did not have custody of this child but at the time of the sentencing hearing was living with her father, who had custody of the child in question, and her infant, of whom she had custody. Her third child lived with the child's grandparents. The Defendant had undertaken efforts to regain custody of the victim by working with the Department of Children's Services and had completed mental health treatment, parenting instruction, and drug testing. The Defendant acknowledged at the sentencing hearing that she had a positive drug screen on one occasion and that she had purchased pseudoephedrine at several pharmacies in order to sell it for twenty dollars a gram to a methamphetamine producer. The

Defendant acknowledged her mistakes and asked that the court grant probation. The presentence report reflects that the Defendant has several prior convictions, including multiple drug offenses.

In denying probation and imposing confinement, the trial court noted that the Defendant had both felony and misdemeanor drug convictions. The court noted that the Defendant's involvement with illicit drugs had affected not only the Defendant but also her child. The court likewise observed that the Defendant had received probation in the past, yet she continued to violate the law after her guilty plea in the present case when she used drugs, purchased pseudoephedrine, and supplied it to a methamphetamine manufacturer.

Appellate review of misdemeanor sentencing is de novo on the record with a presumption that the trial court's determinations are correct. T.C.A. § 40-35-401(d) (2006). This presumption of correctness is conditioned upon the affirmative showing that the trial court considered the relevant facts, circumstances, and sentencing principles. State v. Ashby, 823 S.W.2d 166, 169 (Tenn. 1991). As the Sentencing Commission Comments to section 40-35-401(d) note, the burden is now on the appealing party to show that the sentence is improper.

When determining if confinement is appropriate, the trial court should consider whether (1) confinement is necessary to protect society by restraining a defendant who has a long history of criminal conduct, (2) confinement is necessary to avoid depreciating the seriousness of the offense or confinement is particularly suited to provide an effective deterrence to people likely to commit similar offenses, or (3) measures less restrictive than confinement have frequently or recently been applied unsuccessfully to the defendant. T.C.A. § 40-35-103(1)(A)-(C) (2006). The trial court may also consider a defendant's potential or lack of potential for rehabilitation and the mitigating and enhancement factors set forth in Tennessee Code Annotated sections 40-35-113 and -114. T.C.A. §§ 40-35-103(5) (2006), -210(b)(5) (2006); State v. Boston, 938 S.W.2d 435, 438 (Tenn. Crim. App. 1996). The sentence imposed should be the least severe measure necessary to achieve the purpose for which the sentence is imposed. T.C.A. § 40-35-103(4).

"A sentence must be based on evidence in the record of the trial . . . ." T.C.A. § 40-35-210(f) (2006). In the present case, the Defendant pled guilty. On appeal, she had "a duty to prepare a record which conveys a fair, accurate and complete account of what transpired with respect to the issues forming the basis of the appeal." State v. Ballard, 855 S.W.2d 557, 560 (Tenn. 1993) (citing State v. Bunch, 646 S.W.2d 158, 160 (Tenn. 1983)). Although the Defendant appeals her sentence of confinement, the record does not contain the transcript from the guilty plea hearing. "Where the record is incomplete and does not contain a transcript of the proceedings relevant to an issue presented for review, or portions of the record upon which the party relies, an appellate court is precluded from considering the issue." Id. 560-61 (citing State v. Roberts, 755 S.W.2d 833, 836 (Tenn. Crim. App. 1988)). We have no way of knowing what evidence, if any, or factual basis for the offense was presented at the plea hearing. We must presume the trial court's sentencing determinations and application of law to the facts were correct. See State v. Roberts, 755 S.W.2d at 836 (citations omitted); State v. Oody, 823 S.W.2d 554, 559 (Tenn. Crim. App. 1991).

In consideration of the foregoing and the record as a whole, the judgment of the trial court is affirmed.

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JOSEPH M. TIPTON, PRESIDING JUDGE